

Board of Health Minutes
Monday, March 9, 2015 5:30 PM
Meeting Room C, Town Hall
25 Green Street, Ipswich, MA

Call to Order: Susan Hubbard called the meeting to order at 5:34 PM.

Members attending: Dr. Amesbury and Susan C. Hubbard were in attendance.

Others in attendance: Director of Public Health; Colleen Fermon, Public Health Administrative Assistant; Jennifer Brown, Hugh L. Graham, P.E., Jacob Murray, P.E., Richard Kallman, Esquire, Ingrid Miles, Denise Mootafian, Joseph Pecoraro, Sara and Evan Empey, William Nolan, Carl Moore, Chad Jablonski, John Jablonski, Eleni Parisi and Drew Nikas.

Citizens Queries: None.

Minutes: Dr. Amesbury made a motion to approve the January 12, 2015 minutes. Susan Hubbard seconded the motion. The motion passed unanimously.

Public Hearing:

Susan Hubbard stated the public hearing for the Board of Health Fee Schedule was advertised in the Ipswich Chronicle on February 12, 2015 which was at least 14 (fourteen) days prior to the hearing in compliance with Ipswich's General By-laws, Chapter III, Section 6.

Susan Hubbard read the following proposed change to the Ipswich Board of Health Fee Schedule:

The Food Establishment Re-inspection fee will increase from \$35 to \$75;
The Mobile Food Plan Review fee will increase from \$25 to \$100;
The Certificate of Fitness fee will increase from \$50 to \$100;
The Housing Re-inspection fee will increase from \$25 to \$75; and
The Septic System Installer renewal permit will increase from \$50 to \$100.

Susan Hubbard opened the floor for comment and asked if anyone wished to be heard regarding the fee changes. There being no comments the public hearing was closed. The Board voted unanimously to adopt the Board of Health Fee Schedule changes as proposed. The adopted Fee Schedule is effective March 9, 2015.

Hearings:

5:37 – Hearing - Richard Barbato – 199 County Road – represented by H.L. Graham Associates, Inc. – Title 5 Local Upgrade Approval Request, Alternative Technology Waivers, and Board of Health Septic System Regulation Variance Requests

Hugh L. Graham, P.E., presented, and a hearing was held to consider variances from Title 5 and Ipswich Board of Health Septic System Regulations for a sewage disposal system designed by Gerard McDonald, P.E., dated November 28, 2014 and revised December 16, 2014, for the 3 bedroom dwelling located at 199 County Road, Ipswich, Massachusetts.

Susan Hubbard asked Mr. Graham if the abutter's were notified. A certified mail receipt and letter were provided to the Board as proof of notification.

This is a voluntary upgrade of an existing 3 bedroom septic system. Mr. Graham said that the location of the proposed upgraded septic system was dictated by the presence of a pond and a high fill area which impact the site. The only feasible option for a sewage disposal system was on the northern side of the property.

Mr. Graham proposed an upgrade incorporating a Waterloo Biofilter and Perc Rite Drip Dispersal system and requested the following variances:

- A 48.8% reduction in the leaching area size with the use of a Waterloo Biofilter and Perc Rite Drip Dispersal system.
- A 2 foot reduction in the separation between the leaching area and the estimated seasonal high groundwater (ESHGW). A 2 foot separation is provided with the use of a Waterloo Biofilter and Perc Rite Drip Dispersal system.
- To allow a reduction in the separation between the Perc-Rite Drip Dispersal System leaching area and the property line. A 5 foot separation is provided.
- To allow a reduction in the setback from the leaching area to the wetlands from the 100 foot local requirement. A 50 foot setback is provided.
- To allow a reduction of design flow rate from 150 gallons/bedroom/day to 110 gallons/bedroom/day.

The Board reviewed the sewage disposal system design plan. The Board concurred; there was no other option for the location of the sewage disposal system.

Susan Hubbard asked Colleen Fermon for her thoughts. Ms. Fermon said she visited the site. She felt the Waterloo Biofilter and Perc Rite Drip Dispersal system was a reasonable approach given the site constraints of the property and recommended granting the variances as requested with the following conditions:

- A two year Operations and Maintenance contract for the Waterloo Biofilter and Perc Rite Drip Dispersal systems must be submitted to the Public Health Office prior to the issuance of the Disposal System Construction Permit.
- A Notice of Alternative Disposal for the Waterloo Biofilter and Perc Rite Drip Dispersal systems must be filed at the Southern Essex County Registry of Deeds with a recorded copy provided to the Public Health Office prior to the issuance of the Certificate of Compliance.
- Conservation Commission approval obtained.
- A clean water test must be done with a Perc-Rite representative and the Ipswich Director of Public Health present to verify the system design flush and dose rates and to confirm the absence of leaks.
- The Installer must be trained and certified in the installation of Perc Rite. Proof of training and certification must be submitted to the Public Health Office prior to the issuance of the Disposal System Construction Permit.
- An Ipswich licensed installer must come to the Public Health Office prior to beginning the project to complete the application and submit a trench permit application signed by the owner and the \$50 trench permit fee.

Susan Hubbard made a motion to approve the plan with the aforementioned conditions. Dr. Amesbury seconded the motion. The motion passed unanimously.

5:45 – Hearing - Carra L. Wall, Trustee of The Pheasant Ridge Farm Realty Trust – 3-5 Lakemans Lane represented by H.L. Graham Associates, Inc. – Pheasant Ridge Farm Definitive Subdivision Plan

Hugh L. Graham, P.E., presented, and the Board considered approval of the Definitive Subdivision Plan for 3 and 5 Lakemans Lane, designed by Hugh L. Graham, P.E. and dated January 15, 2015.

Previously, at the meeting of the Board of Health on April 7, 2014, the Board reviewed the Preliminary Subdivision Plan for the 2 lot subdivision of land at 3 and 5 Lakemans Lane, designed by Hugh L. Graham, P.E. and dated March 26, 2014. The Board of Health approved the preliminary plan.

On January 22, 2015 the Public Health Office received a Definitive Subdivision Plan for 3 and 5 Lakemans Lane, designed by Hugh L. Graham, P.E. dated January 15, 2015.

Under the Subdivision Control Law, once a definitive plan is submitted the Board of Health must act within 45 days to approve, deny or modify the plan and provide a written report to the Planning Board. The standard applied in deciding whether to approve or deny a plan is whether or not the lots shown can be used for building sites without injury to the public health. The Board can consider drainage, potential contamination of wells, fields or anything else the Board determines to be a potential health problem.

Mr. Graham explained that at the time of the land division a barn and a single-family dwelling existed on the property. In 2005 a second single-family dwelling was constructed on the property. The Definitive Subdivision Plan, like the

Preliminary Subdivision Plan, seeks to divide the property to create 2 lots such that the barn and one dwelling will sit on one lot and the second newer dwelling will sit on the second lot. Each home will have its own septic system with separate water lines (from County Road) and meters.

Mr. Graham explained the drainage and change in elevation for the road. Each lot will gain its required frontage off a proposed "Court". Primary vehicular access to each lot will remain via an existing driveway; an access and utility easement from Lakemans Lane. Mr. Graham said there will be minimal change in the elevation for the proposed Court. It will be right at or almost at existing grade.

The Board reviewed the Definitive Subdivision Plan for the 2 Lot subdivision of land at 3 and 5 Lakemans Lane.

Mr. Graham outlined some changes to the plan that were made since the Preliminary Subdivision Plan was submitted.

1. The size of the proposed "Court" was reduced. A 16 foot wide all-weather graveled court is proposed. The design complies with the requirements of the Planning Board.
2. The existing curb cut at County Road will be utilized.

Mr. Graham also noted that there were no changes to the storm water management system.

Dr. Amesbury asked Colleen Fermon for her thoughts. Ms. Fermon did not have any public health concerns regarding the Definitive Subdivision Plan. Fermon also noted that pursuant to Title 5, 310 CMR 15.301 (8), when a facility is divided all systems serving the facility must be inspected. Ms. Fermon questioned if the Board wanted to set a timeframe for the inspection and suggested an inspection be done within 60 days of the subdivision being approved by the Planning Board.

Dr. Amesbury made a motion to approve the Definitive Subdivision Plan for the 2 lot subdivision of land at 3 and 5 Lakemans Lane, designed by Hugh L. Graham, P.E. dated January 15, 2015. Susan Hubbard seconded the motion. The motion passed unanimously.

The board decided that the systems must be inspected 60 days after Planning Board approval is given and the plan is recorded.

5:50 – Hearing - John Davis – 62 North Ridge Road – represented by Waterfield Design Group - Title 5 Local Upgrade Approval Requests and Board of Health Septic System Regulation Variance Request

Jacob Murray, P.E., presented, and a hearing was conducted to consider variances from Title 5 for a sewage disposal system plan #1539 designed by Jacob Murray, P.E., dated January 26, 2015 and last revised February 12, 2015 for the 3 bedroom dwelling located at 62 North Ridge, Ipswich, Massachusetts.

Colleen provided some background for the Board. A sewage disposal system plan was approved by the Board of Health on September 9, 2013. This was a 2 bedroom design for the existing cesspool. The previous owner signed an agreement on April 10, 2014 to upgrade the septic system with the Board of Health by April 10, 2016. Subsequently, on April 23, 2014, a walkthrough of the dwelling was conducted by a representative of this office to determine the number of bedrooms for the purpose of septic design only. It was determined that the dwelling contains three (3) bedrooms in accordance with the definition of bedroom provided in 310 CMR 15.000, The State Environmental Code, Title 5. The new owner has submitted a revised 3 bedroom sewage disposal plan for approval.

Mr. Murray explained that a conventional system would require a Local Upgrade Approval from the Soil Absorption System to the abutting property line and would reduce the distance from the SAS to the Coastal Bank therefore he proposed the installation of an Infiltrator system for the upgrade and requested the following variances:

- A reduction in the setback between the leaching area and the cellar wall. A 5 foot setback is provided.
- A reduction in the setback between the septic tank and the cellar wall. A 5 foot setback is provided.
- A reduction in the setback between the leaching area and the coastal bank. A 39.8 foot setback is provided.
- A reduction in the setback from the leaching area to the wetlands from the 100 foot local requirement. A 39.8 foot setback is provided.
- To allow all septic components to be within the 150 foot buffer zone of the ACEC. The closest component, the leaching area, is 106.9 feet from the ACEC.

Susan Hubbard asked Colleen Fermon for her thoughts. Ms. Fermon said this was a difficult site to upgrade and felt this was a fair approach.

Dr. Amesbury made a motion to approve the septic plan and grant the variances as requested:

- The eastern property line must be surveyed and staked prior to construction of the system or wall.
- Conservation Commission approval must be obtained prior to the issuance of the Disposal System Construction Permit.
- Except for the installed SAS, the System Owner shall not construct any permanent buildings or structures in the area for the best feasible replacement system that could be installed to replace the proposed System and the System Owner shall not disturb the site in any other manner that would preclude the future installation of the best feasible replacement system.
- Prior to issuance of Disposal System Construction Permit, the System Installer must certify in writing to the Designer, the Public Health Office, and the System Owner that (s) he is a locally approved System Installer and is certified by or has received appropriate training by the Company. The Infiltrator certification must be submitted to the Public Health Office.
- Prior to the issuance of a Certificate of Compliance by the Public Health Office, the System Installer and Designer must provide, in addition to the certifications required by Title 5, certifications in writing to the Public Health Office that the System has been constructed in compliance with the terms of the Approval for Infiltrator and Standard Conditions for Alternative Soils Absorption Systems with General Use Certification and/or Approved for Remedial Use.
- The system must be installed with the Certificate of Compliance issued by April 10, 2016.
- An Ipswich licensed installer must come to the Public Health Office prior to beginning the project to complete the application and submit a trench permit application signed by the owner and the \$50 trench permit fee.

Susan Hubbard seconded the motion. The motion passed unanimously.

6:00 – Discussion: Title 5 Re-inspection Policy

Colleen Fermon provided background on the Title 5 Re-inspection Policy. Based on the Board's authority provided in 310 CMR 15.301(a) which reads: All systems shall be inspected when the owner or operator thereof is ordered to do so by the local Approving Authority (Board of Health) the Department of Environmental Protection, or court. Previously, the Board decided to order the re-inspection of septic systems that were inspected when the property was not occupied or had not been used for 2 weeks or more prior to the Title 5 Inspection. The Board felt that the functioning of the system had not been assessed under normal use so it should be looked at again. This would protect against one letting a stressed system rest before an inspection was conducted and would also protect potential buyers from purchasing a home with a passing Title 5 Inspection only to have the system fail. The Department of Environmental Protection recommended this policy to local Boards of Health more than 10 years ago.

Since 2008, the real estate, banking, and mortgage market has changed a lot. Many people are claiming this policy is hampering the transfer of property. If a re-inspection is ordered on a passing system; the outcome is not known until after the property transfers. Some lenders will not issue a mortgage with a re-inspection order and some require funds to be escrowed in case of a failure.

Ms. Fermon offered to let the interested parties speak to the Board about this and its real life implications. If the Board decides it will no longer have this policy, Ms. Fermon recommended it not be retroactive since some parties may have already come to an agreement that the Board is not aware of. The owners with active orders for re-inspection could request hearings if they so choose. Ms. Fermon stated that she was not opposed to withdrawing this policy. Although it was well intended and recommended by the Department of Environmental Protection. Ms. Fermon explained that Title 5 Inspections provide a picture in time with no guarantee of the future functioning of the system. As an alternative to the re-inspection policy, Ms. Fermon suggested the Public Health Office could note in their letters that the inspection was done when the property was unoccupied so the system was not in use when it was inspected and the buyer would have to decide what to do based on that information.

Additionally, Ms. Fermon noted she was asked to provide the Title 5 Re-inspection Policy but she was not able to locate the original policy since it was probably approved by the Board 10 or more years ago. At this point, Ms. Fermon felt it was best to have the Board discuss the policy again and decide if they want to uphold, modify, or withdraw the policy going forward.

Ms. Fermon also noted that there are 3 hearings scheduled requesting their Title 5 re-inspection orders be withdrawn subsequent to the discussion.

Susan Hubbard opened the floor for comment.

Attorney Richard Kallman, 4 South Main Street, Ipswich, approached the Board. Mr. Kallman is a local Real Estate Attorney. In simplest terms, the re-inspection requirement makes it impossible for a system to be repaired or replaced, if necessary, prior to a closing and the lender giving the buyer a loan will most likely require the homeowner to escrow 1.5 times the average of the estimates to fix or replace the system.

Mr. Kallman stated that the Title 5 Re-inspection Policy has been causing difficulty with real estate transfers since the rules for escrow accounts are changing. Since the Title 5 Re-inspection Policy is tied to a passing system now it is not unusual that money cannot be put into escrow and subsequently the lender will deny a mortgage. Mr. Kallman asked if the Board felt the policy still benefited the buyer.

Susan Hubbard said the Board has granted many waivers or modifications to the requirement when the policy has caused difficulty with the transfer of property and questioned if the policy has outlived its use.

Dr. Amesbury asked Ms. Fermon if any failed systems had been found as a result of a re-inspection. Ms. Fermon was not aware of any failures.

Susan Hubbard asked how long the policy has been in effect. Ms. Fermon said it has been at least 10-12 years and reiterated that she was not able to locate the original policy since it was approved by the Board so long ago. Title 5 has been revised since the Department of Environmental Protection recommended this policy to local Boards of Health more than 10 years ago but this particular issue was never addressed.

A broker approached the Board and said the Title 5 Re-inspection Policy provides assurance for the buyer but felt that a 2 week timeframe was too stringent. She felt 1 month with a property being unoccupied was more realistic. She requested the Board uphold the policy since if the system fails it becomes a hardship for both the buyer and the seller. She added that there are lenders who are still willing to provide a mortgage in this situation.

Dr. Amesbury felt that it was the responsibility of Real Estate Brokers to execute due diligence and know all potential variables involved in the transfer of a property. Susan Hubbard agreed; it is not the Board's job to micromanage this.

Dr. Amesbury also felt that the broker, buyer, seller, and their respective attorneys should be aware of the situation and be in discussion at some level without there being a town policy.

Ingrid Miles of Keller Williams approached the Board. Ms. Miles attested that there are challenges to both sides of this. She felt both the buyer and seller are harmed with this policy. Not only is a sale stalled when a lender will not give a mortgage, but when a mortgage lender will not allow a sale to go through you have the potential for both parties to become homeless. She attested that Realtors need to begin having this conversation with their clients. Additionally, even if a system passes a Title 5 inspection there is no guarantee it will pass 6 months later. If the Board decides to uphold this policy she asked the Board to consider having the re-inspection conducted less than 6 months after occupancy since this policy often makes a property unable to sell.

Dr. Amesbury felt that this policy made sense when it was adopted but since the real estate, banking, and mortgage market has changed a lot it seem that the policy has outlived its usefulness. Part of the purchase and sale agreement should be education; what the risk(s) is to the buyer. Any problems that arise should be handled through the legal system.

Susan Hubbard made a motion to withdraw the Title 5 Re-inspection policy. Dr. Amesbury seconded the motion. The motion passed unanimously.

6:20 – Hearing - Rebecca Gallucci – 1 Riverside Drive – represented by Richard Kallman– Title 5 Re-inspection Order

Attorney Richard Kallman, presented. The buyers were also present at the meeting.

In accordance with the State Environmental Code, Title 5, 310 CMR 15.00, the Public Health Office received an inspection report from a licensed septic system inspector which indicated the sewage disposal system that serves the property conditionally passed inspection; the distribution box was in poor condition and needed to be replaced. In a letter dated January 22, 2015, the owner was ordered to have an Ipswich licensed Septic Installer replace the distribution box

within 60 days of receipt of the notice; by April 6, 2015. Additionally, since the property had been unoccupied since August 1, 2014, the septic system was not receiving normal flows for 2 weeks prior to the inspection so the owners were ordered to have a re-inspection of the sewage disposal system conducted six (6) months after occupancy occurred.

On February 10, 2015, the Public Health Office received a petition from the owners Attorney, Richard Kallman, for a hearing before the Board of Health to request the withdrawal of the order for the a re-inspection of the sewage disposal system six (6) months after occupancy occurred.

At the meeting, a hearing was conducted regarding the re-inspection order dated January 22, 2015. The Board heard testimony from the owner's attorney that the buyers, who were present, supported the request for the re-inspection order to be withdrawn. Additionally, the mortgage lender will not write a mortgage with a passing Title 5 Inspection report that has a re-inspection order tied to it.

It was noted that the owner is living in Connecticut and that the property is under agreement.

Susan Hubbard asked if the distribution box had been replaced. Mr. Kallman said the repair had not been done. Ms. Fermon noted that the owner has until April 6, 2015 to replace the distribution box and that the weather has hindered the ability for the replacement to occur.

Attorney Kallman attested that he spoke with Kimberly LeMieux of D.F. Clark, Inc. who said they have water usage records for 4 years prior to the inspection and that there was no evidence of a high water level. Additionally, only 2 people were living in the dwelling during that time.

Ms. Fermon added that water consumption records from December 2010 through December 2014 were submitted with the inspection report which indicted there was consistent water usage for many years.

Susan Hubbard made a motion to withdraw the order for a re-inspection of the sewage disposal system since both the buyer and the seller want the order withdrawn. Dr. Amesbury seconded the motion. The motion passed unanimously.

The Board noted that the distribution box must be replaced by April 6, 2015. Once the repair has been completed and inspected, the septic system will pass inspection.

6:25 – Hearing - Stefan Surpitski – 12 Hodges Way – represented by Richard Kallman – Title 5 Re-inspection Order

Attorney Richard Kallman presented. The buyer was also present at the meeting.

In accordance with the State Environmental Code, Title 5, 310 CMR 15.00, the Public Health Office received an inspection report from a licensed septic system inspector which indicated the sewage disposal system that serves the property passed inspection. The Board of Health agreed with the passing determination and found that the sewage disposal system did not pose a risk to public health or the environment. Since the property had been unoccupied since November 30, 2014, the sewage disposal system was not receiving normal flows for 2 weeks prior to the inspection so owner was ordered to have a re-inspection of the sewage disposal system conducted six (6) months after occupancy occurred.

On February 26, 2015, the Public Health Office received a petition from the owner's Attorney, Richard Kallman, for a hearing before the Board of Health to request the withdrawal of the order for the a re-inspection of the sewage disposal system six (6) months after occupancy occurred.

At the meeting, a hearing was conducted regarding the re-inspection order dated January 29, 2015. The Board heard testimony from the owner's attorney that the buyer supported the request for the re-inspection order to be withdrawn. Additionally, the relocation company involved in the transfer would not allow occupancy of the dwelling to occur prior to transfer of title.

The Board reviewed a letter dated March 4, 2015 from the Law Offices of Heaney and Small, LLP who represent the

relocation company, SIRVA Relocation, LLC. The letter confirmed that SIRVA Relocation, LLC, being a relocation company and a non-occupant owner, does not allow any occupancy of a buyer prior to transfer of title for liability purposes.

Dr. Amesbury made a motion to withdraw the order for a re-inspection of the sewage disposal system since both the buyer and the seller want the re-inspection order withdrawn. Susan Hubbard seconded the motion. The motion passed unanimously.

6:30 – Hearing - Joseph Pecoraro – 5 Mulholland Drive – Title 5 Re-inspection Order

The buyers, Evan and Sara Empey, and the owner Joseph Pecoraro, and the owner's Attorney, Realtor Ingrid Miles, and Realtor Andrea LaCroix were present at the meeting.

In accordance with the State Environmental Code, Title 5, 310 CMR 15.00, the Public Health Office received an inspection report from a licensed septic system inspector which indicated the sewage disposal system that serves the property conditionally passed inspection; the distribution box was in poor condition and needed to be replaced. In a letter dated January 14, 2015, the owners were ordered to have an Ipswich licensed Septic Installer replace the distribution box within 60 days of receipt of the notice; by March 14, 2015. Additionally, since the property had been unoccupied since September, 2014, the septic system was not receiving normal flows for 2 weeks prior to the inspection so the owners were ordered to have a re-inspection of the sewage disposal system conducted six (6) months after occupancy occurred. The distribution box was replaced on January 23, 2015 so the sewage disposal system passes inspection.

On February 25, 2015, the Public Health Office received a petition from the seller's Realtor, Ingrid Miles, for a hearing before the Board of Health to request the withdrawal of the order for the re-inspection of the sewage disposal system six (6) months after occupancy occurred.

At the meeting, a hearing was conducted regarding the re-inspection order dated January 14, 2015. The owner's attorney requested that the re-inspection be withdrawn. The owner's attorney said obtaining the title insurance would present a problem with a passing Title 5 Inspection report that has a re-inspection order tied to it. He attested that the buyers could be let out of the purchase agreement if they don't want to pursue the purchase if the re-inspection is not required. It was noted that, with the owner's permission, they are currently occupying the dwelling.

The Attorney noted that Mr. Pecoraro's father passed away on September 30, 2015. Subsequently, his mother had a caregiver who lived with her at the home until she passed away a month later. Mr. Pecoraro was at the home 3-4 times a week during that time. Subsequently, he was preparing the home to be put on the market for sale. The Attorney argued that the septic system received normal flows during this timeframe and attested that he had consistent water records for the property through December 2014.

At the meeting the Board also heard testimony from the buyer's realtor, Andrea LaCroix, and the buyers who were present. The buyers did not support the request for the re-inspection order to be withdrawn since they have a purchase and sale agreement that includes a re-inspection of the sewage disposal system six (6) months after occupancy occurs. They said they pursued protection through the Purchase and Sale agreement process and were not interested in being let out of the purchase agreement to buy the property.

Ms. LaCroix said they had an agreement with the seller that there would be money held in escrow based on the re-inspection order of the septic system. Since there is a Title 5 inspection with a re-inspection tied to it, the buyer's lender will not issue a mortgage until the failing system is upgraded or funds to perform the upgrade are escrowed.

Ms. Miles stated that the buyers were informed of the conditional pass and re-inspection order when they made an offer on the property. At that time Ms. Miles said she questioned if the buyer's lender would do an escrow. Ms. LaCroix said she was just informed of this request last week.

Ms. LaCroix provided a copy of the purchase and sale agreement for the Board. The Board reviewed the agreement.

Susan Hubbard asked when the system was installed. The owner, Joseph Pecoraro said the system was installed in 1972.

Colleen Fermon noted that the Public Health Office has no information on the system other than the Title 5 inspection report.

Dr. Amesbury made a motion to uphold the order for a re-inspection of the sewage disposal system since both parties were in agreement on the re-inspection at the time the purchase and sale agreement was signed. A re-inspection of the sewage disposal system must be conducted six (6) months after occupancy. Susan Hubbard seconded the motion. The motion passed unanimously.

6:35 – Hearing - Mike and Carol Tomaselli – 34 Plover Hill Road – represented by Bill Nolan - Title 5 inspection variance for an addition

Bill Nolan presented, and the Board conducted a hearing to consider a request for a variance from section 10.2 of the Ipswich Board of Health Septic Regulations. Section 10.2 reads; a septic system shall be inspected by an Ipswich licensed Title 5 Inspector whenever an addition or renovation to an existing building, excluding decks, is proposed that increases the footprint of the building and requires a building permit or occupancy permit from the building inspector. The inspection requirement shall be waived if a Certificate of Compliance was issued or a Title 5 Inspection was completed within the previous 3 years, or if the system is under an operation and maintenance contract.

At the meeting, the owner's representative, Bill Nolan, proposed an increase in the footprint of the dwelling to allow the addition of a stairway and an expansion of the mudroom. The addition will be where there is an existing deck. Mr. Nolan stated that the current dwelling does not have a code compliant stairway and the expansion will not result in an increase in flow to the septic system or increase in habitable space.

It was noted that a Title 5 inspection was conducted on June 16, 2001 and pumping records from March 24, 2014 and December 15, 2014 did not note any problems with the septic system.

The Board reviewed the building plans.

Susan Hubbard asked Colleen Fermon for her thoughts. Ms. Fermon recommended granting the variance request based on the limited scope of work and the fact that the expansion will not create an increase in habitable space.

Susan Hubbard made a motion to grant the variance and not require the Title 5 inspection for the proposed addition since the system passed a Title 5 inspection on June 16, 2001 and pumping records from March 24, 2014 and December 15, 2014 did not note any problems with the septic system. Dr. Amesbury seconded the motion. The motion passed unanimously.

6:40 – Hearing - Carl Moore – 2 Fellows Road –Septic System Upgrade Extension

Carl Moore presented, and a hearing was conducted, upon his request, regarding an extension for the upgrade of the septic system.

On December 12, 2012, Mr. Moore purchased the property at 2 Fellows Road but the property transferred without benefit of a Title 5 Inspection being conducted as required under 310 CMR 15.000 Title 5. Subsequently, he entered into an enforceable agreement with the Board of Health to upgrade the system within two (2) years from the date of title transfer; by April 3, 2015.

On March 4, 2013, the Board approved an upgrade septic system design plan to serve 2 Fellows Road, Ipswich. At the meeting it was noted that the Disposal System Construction Permit is valid until March 4, 2016.

The Board discuss a timeframe for bringing the property into compliance. Mr. Moore requested an extension since the weather will prevent him from upgrading the septic system prior to the April 3, 2015 deadline and requested six (6) more months. Additionally, it is his intention to build a barn and workshop and he would like to do this in conjunction with the septic installation.

Based on the weather, Susan Hubbard made a motion to grant an extension for the upgrade of the system until December 31, 2015. The system must be installed with the Certificate of Compliance issued by December 31, 2015. Dr. Amesbury seconded the motion. The motion passed unanimously.

6:42 – Hearing - Three Palms LLC. – 37 Jeffrey’s Neck Road - represented by Grant Matesic – Certificate of Compliance

On March 4, 2015, the Public Health Office received a petition from the owner’s Realtor, Ingrid Miles, for a hearing before the Board of Health to request the Board grant the Certificate of Compliance for the system serving 37 Jeffrey’s Neck Road, Ipswich, Massachusetts without the required signature of the Disposal System Installer. Ingrid Miles, Chad Jablonski and John Jablonski, presented, and a hearing was held to consider the request.

The system was installed in December 2013 and January 2014. A final inspection by a representative of the Board of Health was conducted on January 21, 2014. Subsequently, on February 27, 2014 the as-built and the signature of the designer on the Certificate of Compliance were provided. On March 10, 2014 a letter was sent to the Installer, Chad Jablonski, requesting his signature on the Certificate of Compliance. On March 12, 2014 Mr. Jablonski informed the Public Health Office that there was a financial dispute with the owner, Three Palms, LLC. so he was not ready to sign the Certificate of Compliance but would when the financial dispute was settled.

The Board heard testimony from the owner’s Realtor that there is a buyer in place and the property cannot transfer without the requisite Certificate of Compliance. The Certificate of Compliance is needed before the septic system can be used and the dwelling occupied. It was noted that the dwelling is currently unoccupied.

The installer Chad Jablonski and John Jablonski, owner of Jablonski and Sons, Inc., reported to the Board that they have not been paid the final payment or for extra costs incurred. Jablonski and Sons, Inc. is pursuing court action against Paramus Construction whose owners are the same person(s) as Three Palms LLC. Chad Jablonski said he would sign the Certificate of Compliance once a settlement is reached. He requested the Board not issue the Certificate of Compliance without his signature since it is his only guarantee he will be paid.

Susan Hubbard asked Colleen Fermon for her thoughts. Ms. Fermon said it is not under the purview of the Board of Health to be involved in money disputes.

Susan Hubbard stated that the Board has never waived the issuance of a Certificate of Compliance for a septic system.

Dr. Amesbury also added that the Board cannot compel anyone to sign a Certificate of Compliance.

The Board reviewed Title 5, 310 CMR 15.000. 310 CMR 15.201 (1) prohibits anyone from discharging sewage to a new, upgraded or expanded system without first obtaining a Certificate of Compliance from the Approving Authority. 310 CMR 15.201(4) requires that prior to the issuance of a Certificate of Compliance, the Disposal System Installer and the Designer shall certify in writing on a form approved by the Department that the system has been constructed in compliance with 310 CMR 15.000, the approved design plans and all local requirements, and that any changes to the design plans have been reflected on as-built plans which have been submitted to the Approving Authority by the Designer prior to the issuance of a Certificate of Compliance.

Susan Hubbard made a motion to deny the request for a variance to 310 CMR 15.201(4); the Board will not issue the Certificate of Compliance without the Disposal System Installer’s signature. The parties will have to work out their legal issues with the installation of the septic system. Dr. Amesbury seconded the motion. The motion passed unanimously.

6:55 – Hearing - Eleni and Sarantis Parisi – Zeno’s Roast Beef – Time as a Public Health Control Variance

Eleni Parisi presented, and the Board reviewed a proposal to use time only, instead of time and temperature, as a public health control for potentially hazardous food (PHF) that is held for immediate consumption. In accordance with the State Sanitary Code 105 CMR 590.004 (H) and Federal 1999 Food Code 3-501.19 Ms. Parisi requested a variance to use time only, instead of time and temperature, as a public health control for roast beef.

The Board reviewed the procedures and log.

Susan Hubbard asked Colleen Fermon for her thoughts. Ms. Fermon felt Zeno’s was a good candidate for a variance and recommended granting the variance with the condition that the procedures log is modified to include a space for corrective actions or the sample log provided by the Public Health Office is used.

Susan Hubbard made a motion to grant the variance to use time as a public health control as requested for roast beef with the following conditions:

1. The procedures log must be modified to include a space for corrective actions or you must use the sample log provided to you by this office.
2. The employee-training plan must include employee health and hygiene, cleaning and sanitizing procedures, cross contamination procedures, in addition to training on the HACCP plan.
3. The aforementioned required employee training must be documented for each employee and provided to all new hires.
4. The written procedures must be maintained in the food establishment and made available to the Food Inspector at all times.
5. Compliance with 105 CMR 590.000 must be maintained.

Dr. Amesbury seconded the motion. The motion passed unanimously.

The Board noted that if non-compliance with the approved plan is found, the approval of Time as a Public Health control would be suspended immediately

7:00 – Hearing Joanne B. Brown – 25 Turkey Shore Road - request for hearing on Board of Health order to correct for violations of Minimum Standards of Fitness for Human Habitation

Joanne Brown and Drew Nikas presented.

As a result of a complaint received by this office, a housing inspection was conducted on February 5, 2015, at 25 Turkey Shore Road, Unit A, first floor, Ipswich. In accordance with 105 CMR 410.000: State Sanitary Code Chapter II: Minimum Standards of Fitness for Human Habitation. Violations were found and an order to correct was issued on February 10, 2015. The owner was ordered to substantially correct the violations within 30 days. Subsequently, on February 24, 2015, Ms. Brown requested a hearing before the Board of Health to discuss the order to correct dated February 10, 2015.

At the meeting, a hearing was held to discuss the violations. At the meeting Ms. Brown explained that all violations have been repaired except the front stairs are not cleared of snow and there is a hairline crack in the transom window over the bathroom door. She attested that there are 3 other means of egress that are cleared of snow and that the front entrance is never used and is very steep.

The Board reviewed an email from the tenant, Danielle Petradelis, that indicated all repairs were done except snow removal from the front entrance and the stove burner (back left). Drew Nikas, who had done the repairs, said he thought he repaired it but he would check the stove burner again.
The Board reviewed the remaining violations.

Susan Hubbard made a motion to modify the order to correct dated February 10, 2015 and withdraw the order to correct for the following violations:

410.750: Conditions Deemed to Endanger or Impair Health or Safety, 410.451: Egress Obstruction and 410.452: Safe Condition

The front door is blocked by snow and the front stairs are not cleared of snow so the means of egress is obstructed.

She felt that the 3 other means of egress that were cleared were sufficient.

410.351: Owner's Installation and Maintenance Responsibilities

There is a crack in the window over the bathroom door.

She said that a hairline crack in a transom window would not negatively impact the tenant.

Dr. Amesbury seconded the motion. The motion passed unanimously.

The Board noted that a re-inspection will be conducted to confirm that all other violations identified in the February 10, 2015 have been corrected.

7:30 –Director of Public Health Report:

January and February 2015 Activities Reports: The Board reviewed the Director's Reports.

Food Trainings: Dates and locations for temporary food and farmer market trainings have been confirmed. The trainings will cover the applicable regulations and food safety, the application process and the inspection process. Ms. Fermon contacted the MA Department of Public Health Food Protection Program to see if a representative would be able to attend one or all of the trainings. No one can attend since the trainings will be held at night and on a Saturday. The Food Inspector and Ms. Fermon choose these times to accommodate the people who participate in these types of events that have full time jobs so they could have a good turnout at the trainings. The Public Health Office sent out notices of the trainings in the beginning of February. The dates of training are:

Temporary Food training Tuesday, March 24, 6:00-8:00 pm at the Masonic Temple

Temporary Food training Saturday, April 18, 9:00-11:00 am at the Masonic Temple

Farmer Market training Monday, March 30, 6:00-8:00 pm in Room C of Town Hall

Piggery: The owner of 66 Town Farm Road is seeking an occupancy permit to have pastured pigs. The Building Inspector, Jim Sperber, contacted the Town Attorney and a piggery is not prohibited by the Zoning Bylaws. Pursuant to MA General Law, Chapter 111, section 143, site plan approval and a public hearing with the Board of Health is required as part of the approval process since a piggery is considered noisome trade. The Town Attorney said he'd look into this and provide Ms. Fermon with some feedback. The MA Department of Environmental Protection (DEP) is named in the MA General Law as being the entity to give the Board of Health advice, upon request. Ms. Fermon requested DEP involvement but so far DEP hasn't been able to find anyone that is familiar with piggery site approval or knows what to do. Ms. Fermon contacted MA Department of Agriculture and they could not provide any guidance either. Ms. Fermon will contact Health Directors in communities with pig operations.

John Morris: The Public Health Department has granted John Morris a part-time contract to conduct housing inspections in compliance with 105 CMR 410: State Sanitary Code, Chapter II: Minimum Standards of Fitness for Human Habitation.

Next Board Meeting: The next meetings of the Board of Health were scheduled for April 6, 2015, May 4, 2015, June 1, 2015, July 13, 2015 and August 3, 2015 at 5:30 PM.

Adjourn: Susan Hubbard made the motion to adjourn at 8:00 PM. Dr. Amesbury seconded the motion. The motion to adjourn passed unanimously.

Documents used at the March 9, 2015 Board of Health meeting:

- Septic system design plan for 199 County Road
- Pheasant Ridge Farm Definitive Subdivision Plan
- Board of Health Fee Schedule
- Public Hearing Notice from the Ipswich Chronicle
- Activities reports for January and February 2015
- Septic system design plan for 62 North Ridge Road
- 1 Riverside Drive order for Title 5 re-inspection dated January 22, 2015
- 12 Mulholland Drive order for Title 5 re-inspection dated January 29, 2015
- 5 Mulholland Drive order for Title 5 re-inspection dated January 26, 2015
- Title 5 inspection report for 34 Plover Hill Road dated June 16, 2001 and pumping records from March 24, 2014 and December 15, 2014
- 2 Fellows Road septic plan approval letter and agreement to upgrade the septic system signed on June 24, 2013
- 37 Jeffrey's Neck Road septic system application, design approval, as-built plan, and email from Grant Matesic
- Zenos Roast Beef – Time as a Public Health Control-Food Protection Control Policy RF3-1 and Time as a Public Health Control log
- 25 Turkey Shore Road- order to correct dated February 10, 2015

Susan C. Hubbard, Chairperson

Dr. Spencer Amesbury, Board Member